

CIVIL COVER SHEETCounty in which action arose Oakland County

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EATON BLUMENSTEIN

DEFENDANTS

STATE FARM FIRE AND CASUALTY COMPANY

(b) County of Residence of First Listed Plaintiff Oakland County, MI
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Bloomington, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jason J. Liss (P48742), Fabian, Sklar & King, P.C.
33450 W. Twelve Mile Road, Farmington Hills, MI 48331-3350
(248) 553-2000

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Breach of homeowners insurance policy arising from a fire loss to Plaintiff's dwelling and personal property, and loss of use.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE October 21, 2014 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

EATON BLUMENSTEIN

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY

Defendant.

Civil Action No. 14-cv-

Hon.

SUMMONS IN A CIVIL ACTION

To: State Farm Fire and Casualty Company
 c/o Milt Bossch, Vice President - Agency
 5528 Portage Road
 Portage, MI 49002-1720
 A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: _____
Signature of Clerk or Deputy Clerk

Date of Issuance: _____



Summons and Complaint Return of Service

Case No. _____

Hon. _____

A copy of the Summons and Complaint has been served in the manner indicated below:

Name of Party Served: _____

Date of Service: _____

Method of Service

____ Personally served at this address:

____ Left copies at the usual place of abode with (name of person):

____ Other (specify):

____ Returned unexecuted (reason):

Service Fees: Travel \$ _____ Service \$ _____ Total \$ _____

Declaration of Server

I declare under the penalty of perjury that the information contained in this Return of Service is true and correct.

Name of Server: _____

Signature of Server: _____

Date: _____

Server's Address: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EATON BLUMENSTEIN,

Plaintiff,

vs.

Case No. 14-cv-
Hon.

STATE FARM FIRE AND CASUALTY COMPANY,
a foreign corporation,

Defendant.

Jason J. Liss (P48742)
FABIAN, SKLAR & KING, P.C.
Attorneys for Plaintiff
33450 W. Twelve Mile Road
Farmington Hills, Michigan 48331-3350
(248) 553-2000
jliss@fabiansklar.com

COMPLAINT

NOW COMES Plaintiff, EATON BLUMENSTEIN, by and through his attorneys, FABIAN, SKLAR & KING, P.C., and for his Complaint against Defendant, STATE FARM FIRE AND CASUALTY COMPANY, states unto this Honorable Court as follows:

1. Plaintiff, EATON BLUMENSTEIN, resides in the City of Ferndale, County of Oakland, State of Michigan and is a citizen of the State of Michigan.
2. Defendant, STATE FARM FIRE AND CASUALTY COMPANY, is a foreign corporation, licensed to conduct business in the State of Michigan, which has its principal place of business in the City of Bloomington, State of Illinois, and has registered Illinois as its State of Domicile with the Michigan Department of Licensing and Regulatory Affairs and is, therefore, believed to be a citizen of the State of Illinois.
3. The facts giving rise to this Complaint occurred in the City of Ferndale, County of

Oakland, State of Michigan.

4. The amount in controversy between the parties exceeds the sum of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs and interest.

5. The Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332, due to the amount in controversy and diversity of citizenship of the parties.

6. At all relevant times, Plaintiff was the named insured or otherwise entitled to insurance benefits pursuant to homeowners insurance policy no. 82-GM-8490-0 issued by Defendant, a copy of which is in Defendant's possession, which insured Plaintiff's property located at 570 E. Oakridge Street, Ferndale, MI 48220-1335 against loss due to fire and other perils, including physical damage to the dwelling, physical damage to Plaintiff's personal property, and loss of use.

7. All premiums were paid and current and Defendant's policy of insurance was in full force and effect at all times prior to and including September 1, 2013.

8. On or about September 1, 2013, a fire loss occurred at Plaintiff's insured dwelling, causing extensive physical damage to the structure and its contents as well as loss of use.

9. Upon discovery, Plaintiff promptly notified Defendant of the loss.

10. Pursuant to the terms of Defendant's policy of insurance, Plaintiff delivered satisfactory proof of the fact and the amount of his losses to Defendant.

11. MCL 500.2836(2) requires an insurance company to make payment of a claim within thirty (30) days of receipt of proof of the amount of the loss.

12. MCL 500.2006 requires an insurer to pay 12% interest on claims where the Defendant insurer has failed to make payment of a claim within sixty (60) days of receiving satisfactory proof of loss.

13. MCL 500.2833(1)(m), and Defendant's policy, requires the amount of the loss and actual cash value to be set by appraisal if the parties fail to agree.

14. A court is to determine coverage in a declaratory action before an appraisal of the damage to the property. *Auto-Owners Ins. Co. v. Kwaiser*, 190 Mich App 482, 487 (1991).

15. On February 27, 2014, Defendant denied coverage for Plaintiff's claim, thereby breaching its insurance contract with Plaintiffs.

16. As a direct and proximate result of Defendant's breach of the insurance contract and the aforementioned statutory provisions, Defendant remains indebted to Plaintiff for his insured losses, for his incidental and consequential damages that were in the contemplation of the parties at the time the contract was made or which are the natural and usual consequences of a breach of a homeowner's insurance contract, and for 12% penalty interest pursuant to MCL 500.2006.

WHEREFORE Plaintiff, EATON BLUMENSTEIN, respectfully requests this Honorable Court to:

- (A) Enter a declaratory judgment in his favor and against Defendant STATE FARM FIRE AND CASUALTY COMINSURANCE COMPANY that there is coverage for his losses;
- (B) Order that any disputes as to the amount of loss or actual cash value are to be set by statutory appraisal pursuant to MCL 500.2833(1)(m) and Defendant's insurance contract;
- (C) Award him 12% interest pursuant to MCL 500.2006 on all amounts determined not to be timely paid;
- (D) Award him all incidental and consequential damages determined to be owing;
- (E) Award him prejudgment interest from the date of the filing of this Complaint to the date of the entry of judgment, together with his taxable costs and any attorney fees which may be permitted;

- (F) Award such further relief that the Court deems appropriate in equity and good conscience.

Respectfully submitted,

FABIAN, SKLAR & KING, P.C.

/s/ Jason J. Liss

Jason J. Liss (P48742)
Attorneys for Plaintiff
33450 W. Twelve Mile Road
Farmington Hills, Michigan 48331
(248) 553-2000
jliss@fabiansklar.com

Dated: October 21, 2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EATON BLUMENSTEIN,

Plaintiff,

vs.

Case No. 14-cv-
Hon.

STATE FARM FIRE AND CASUALTY COMPANY,
a foreign corporation,

Defendant.

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JURY DEMAND

NOW COMES Plaintiff, EATON BLUMENSTEIN, by and through his attorneys,
FABIAN, SKLAR & KING, P.C., and hereby demands a jury trial in the above-entitled matter.

Respectfully submitted,

FABIAN, SKLAR & KING, P.C.

/s/ Jason J. Liss

Jason J. Liss (P48742)
Attorneys for Plaintiff
33450 W. Twelve Mile Road
Farmington Hills, Michigan 48331
(248) 553-2000
jliss@fabiansklar.com

Dated: October 21, 2014